IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY

PLAINTIFF

vs.

No. 3:00CV110-D-D

HELENA CHEMICAL COMPANY;
and HERCULES, INC.

DEFENDANTS

OPINION

Presently before the court is the Defendants' motion for summary judgment.[1] Upon due consideration, the court finds that the motion should be granted.

A. Factual Background

The Plaintiff seeks contribution from the Defendants for environmental cleanup expenses incurred by the Plaintiff at a former pesticide formulation and agricultural chemical distribution plant located in Cleveland, Mississippi. The Plaintiff operated the subject plant from 1951 until 1969, when it subleased the plant to the Defendant Helena Chemical Company, which continued formulating pesticides at the facility until 1975. In 1991, the then-current occupant of the facility contacted the Plaintiff and complained of a bad chemical smell in the soil and indicated that a pit on the facility's property contained highly corrosive materials. After the Plaintiff's initial evaluation of the property indicated potential environmental concerns, the Plaintiff repurchased the property in order to further

[1]Also pending before the court is the Plaintiff's motion to strike, and the Plaintiff's motion for leave to file amended complaint and vacatur. Upon due consideration, the court finds that these motions should be denied.

assess the property's environmental condition. Subsequently, in January of 1997, the Plaintiff entered into a Consent Order with the Mississippi Department of Environmental Quality (MDEQ) in order to begin remedial environmental action and clean up the property. As a result, the Plaintiff has incurred cleanup costs in excess of $3 million. No one has ever filed suit against the Plaintiff, nor has the federal government ever taken any action with regard to the subject property.

The Plaintiff filed this suit in June of 2000, seeking to recover a portion of the costs it has incurred in cleaning up the subject property. In its complaint, the Plaintiff asserts claims for:

(i) contribution pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9613(f);

(ii) a declaratory judgment concerning the rights and duties of the parties under CERCLA; and

(iii) equitable or common law contribution.

The Plaintiff has subsequently voluntarily dismissed the third cause of action, for equitable or common law contribution, with prejudice. The Defendants have moved for summary judgment as to the Plaintiff's two remaining causes of action.

B. Summary Judgment Standard

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden then shifts to the non-movant to go beyond the pleadings and "by...affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp., 477 U.S. at 324. That burden is not discharged by mere allegations or denials. Fed. R. Civ. P. 56(e).

While all legitimate factual inferences must be viewed in the light most favorable to the non-movant, Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986); Celotex Corp., 477 U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

C. Discussion

1. The Plaintiff's CERCLA Claim for Contribution

As previously noted, the Plaintiff has asserted a claim for contribution pursuant to CERCLA, 42 U.S.C. §9613(f). Congress enacted CERCLA to facilitate the cleanup of hazardous waste sites, and to shift the costs of environmental response from the taxpayers to the parties who benefitted from the use or disposal of the hazardous substances. OHM Remediation Serv. v. Evans Cooperage Co., Inc., 116 F.3d 1574, 1578 (5th Cir. 1997). CERCLA allows parties who incur environmental cleanup costs to recover from other "potentially responsible parties" (PRPs). See 42 U.S.C. §9607(a). The Plaintiff seeks to recover a portion of its cleanup costs under the contribution provision of CERCLA, 42 U.S.C. §9613(f). This provision allows a PRP that has purportedly assumed a disproportionate share of the cleanup costs, such as the Plaintiff, to seek contribution from other PRPs.

The Plaintiff's claim for contribution, however, fails as a matter of law because the Fifth Circuit has held that "a party can file a [CERCLA] contribution claim only if it has been alleged or deemed liable under [CERCLA] or if the federal government has ordered it to clean up contaminated sites under [CERCLA]." Aviall Servs., Inc. v. Cooper Indus., Inc., 263 F.3d 134, 138-39 (5th Cir. 2001). Here,

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[2]Although the Plaintiff entered into a Consent Order with the Mississippi Department of

it is undisputed that neither condition has been met.[2] As such, the court finds that Aviall mandates that the Plaintiff's claim be dismissed.

In fact, the Plaintiff does not attempt to distinguish Aviall and does not dispute that Aviall holds that the Plaintiff's claim for contribution under CERCLA be dismissed. Rather, the Plaintiff argues that Aviall was wrongly decided, and this court should either ignore Aviall or defer ruling on the Defendants' motion for summary judgment until either the Fifth Circuit or the United States Supreme Court overrules Aviall. The court is not at liberty to do so. It is axiomatic that this court is bound by the pronouncements of the Fifth Circuit, and it is undisputed that Aviall controls the court's decision in the present case. See Bellaire Gen. Hosp. v. Blue Cross Blue Shield of Michigan, 97 F.3d 822, 826 (5th Cir. 1996) ("It has been long established that a legally indistinguishable decision of this court must be followed by other panels of this court and district courts unless overruled *en banc* or by the United States Supreme Court.").

As such, the court finds that no genuine issue of material fact exists as to this claim, and the Defendants are entitled to judgment as a matter of law.

2. The Plaintiff's Request for Declaratory Judgment

In addition to its CERCLA contribution claim, the Plaintiff requests that the court issue a declaratory judgment concerning the rights and duties of the parties under CERCLA. The court declines to do so.

28 U.S.C. §2201(a) provides, in relevant part, that "[i]n a case of actual controversy within its

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Environmental Quality in 1997, pursuant to which the Plaintiff performed some subsequent cleanup operations, the Aviall court specifically rejected the argument that a state-ordered cleanup should allow the party to bring a CERCLA contribution claim; only during or after a *federally* ordered cleanup operation may a party bring such a claim. Aviall, 263 F.3d at 144-45. The Aviall court noted, however, that only CERCLA contribution claims are so barred - parties are free to bring contribution claims based on state law. Id. at 140. In fact, the Plaintiff here pled a state law claim for contribution in its complaint, but subsequently voluntarily dismissed that claim with prejudice.

jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party. . ." 28 U.S.C. §2201(a). It is well-settled in the Fifth Circuit that a district court has discretion over whether to decide or dismiss a declaratory judgment action. Travelers Ins. Co. v. Louisiana Farm Bureau Fed'n, Inc., 996 F.2d 774, 778 (5th Cir. 1993).

Here, the court finds that the Plaintiff's request for declaratory judgment should be dismissed along with the Plaintiff's CERCLA contribution claim. In its declaratory judgment request, the Plaintiff seeks to have the court determine the parties' respective rights and duties under CERCLA. The court has, however, already ruled that the Plaintiff's CERCLA claim must be dismissed; as such, the court finds that the Plaintiff's request for declaratory judgment should also be dismissed See International Ass'n of Machinists and Aerospace Workers v. Tennessee Valley Auth., 108 F.3d 658, 668 (6th Cir. 1997) ("A request for declaratory relief is barred to the same extent that the claim for substantive relief on which it is based would be barred."). As such, the court grants the Defendants' motion for summary judgment as to the Plaintiff's request for declaratory judgment.

D. Conclusion

In sum, the Defendants' motion for summary judgment will be granted. The Defendants have shown that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law on all of the Plaintiff's remaining claims.

A separate order in accordance with this opinion shall issue this day.

This the ____day of October 2001.

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Chief Judge

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vs. No. 3:00CV110-D-D

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DEFENDANTS

ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that

(1) the Defendants' motion for summary judgment (docket entry 56) is GRANTED, and the Plaintiff's claims are DISMISSED WITH PREJUDICE;

(2) the Plaintiff's motion to strike (docket entry 63) is DENIED;

(3) the Plaintiff's motion for leave to file amended complaint and vacatur (docket entry 64) is DENIED; and

(4) this case is CLOSED.

All memoranda, depositions, declarations and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the ____day of October 2001.

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Chief Judge